

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7394

Petition of Vermont Electric Power )  
Company, Inc., and Vermont Transco, LLC, )  
for authority to condemn easement rights in )  
property interests of David P. & Carrie T. )  
Hathaway, the Vermont State Employees )  
Credit Union, Countrywide Bank, and the )  
Countrysides of Waterbury Homeowners )  
Association, Inc. and its Individual Members, )  
in Waterbury, Vermont, for the purpose of )  
constructing the 115 kV transmission line )  
portion of the so-called Lamoille County )  
Project )

Order entered: 11/12/2009

**ORDER RE: COMPLIANCE FILING**

On August 20, 2009, the Vermont Public Service Board issued a final Order ("Final Order") condemning certain real property belonging to David and Carrie Hathaway in Waterbury, Vermont, in order to facilitate the construction of the 115 kV transmission line portion of the so-called Lamoille County Project. Vermont Electric Power Company, Inc. ("VELCO") was ordered to submit a revised proposed easement deed that would be in the nature of a quitclaim deed.

On September 1, 2009, VELCO submitted a revised proposed easement deed to satisfy the compliance filing requirement in the Board's Final Order. At that time, VELCO also sought partial reconsideration of the requirement to fully revise the proposed easement deed to reflect the nature of a quitclaim deed. On October 19, 2009, the Board issued an Order ("Reconsideration Order") denying VELCO's request for partial reconsideration and directing VELCO to insert the following sentence into the final version of the proposed easement deed:

*The Grantors, their successors and assigns, shall not erect or place within the limits of or upon the Easement Area any building, line, conduit, dam, levee, lake, pond or any other structure or thing, nor will any change in the grade or elevation of the Easement Area be made, which, in the judgment of the Grantee, might interfere with the exercise of the rights hereby conveyed.*

On October 26, 2009, VELCO submitted a second, revised proposed easement deed to satisfy the compliance filing requirement in the Board's Final Order. We have reviewed VELCO's second, revised proposed easement deed and have determined that it complies with our Final Order, as well as with our Reconsideration Order. Therefore, VELCO's compliance filing of October 26, 2009, is approved without modification.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 12<sup>th</sup> day of November, 2009.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: November 12, 2009

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

**EASEMENT DEED**

KNOW ALL PERSONS BY THESE PRESENTS: That David P. Hathaway and Carrie T. Hathaway, of the Town of Waterbury, County of Washington and State of Vermont (hereinafter, "Grantor," whether one or more), in consideration of One Dollar and other valuable consideration paid by **VERMONT TRANSCO LLC**, (hereinafter, together with its successors and assigns, called "Grantee"), a Vermont limited liability company duly authorized and existing according to law, with its offices and principal place of business in the Town of Rutland, County of Rutland and State of Vermont, the receipt and sufficiency of which is hereby acknowledged, do hereby GRANT, BARGAIN, SELL AND CONVEY unto the said Grantee, its successors and assigns, a perpetual right-of-way and easement (a) to travel within for the purpose of reaching other properties, whether or not immediately adjacent, for the purpose of conducting monitoring, maintenance, construction or other activities, and (b) to erect, construct, repair, maintain, reconstruct, relocate, operate and remove facilities for the transmission and/or distribution of electricity and for the transmission and/or distribution of data, information, video and voice communications including wireless communication antennas and facilities (any of which facilities may be erected at different times and at such voltages and capacities as the Grantee may from time to time determine) including, but not limited to lines, wires, poles, towers, cables, foundations, anchors, guys, braces, fittings, equipment and other structures, whether over, upon or beneath a certain strip of land owned by the Grantor in the Town of Waterbury in the County of Washington and State of Vermont, hereinafter referred to as the "Easement Area", and bounded and described as follows:

An area of varied width adjoining the Grantor's westerly boundary common to land now or formerly of Ralph D. Gerlach, extending northeasterly from the Grantor's southerly boundary common to land now or formerly of Sharon A. Baade and Jane E. Olesen, to the Grantor's northerly boundary common to land now or formerly of James C. Matthews, more specifically defined and depicted on a survey plat entitled "Right of Way Plat Showing Easement to be Acquired from David P. and Carrie T. Hathaway, by Vermont Transco LLC, Town of Waterbury, Washington County, Vermont "dated January, 2008 by Coler & Colantonio, Inc. and filed as Slide #135 in the Town of Waterbury land records. The Easement Area contains 0.49 acres, more or less.

The foregoing Easement Area is a portion of the same lands and premises conveyed to Grantor by Warranty Deed of Joan D. Wheeler dated April 16, 1999 and recorded April 20, 1999 in Volume 163, page 489 of the Town of Waterbury land records.

The right of way and easement conveyed herein is subject to all rights of way and easements of record, and

- a. Mortgage Deed of the Grantor to VT State Employees Credit Union dated October 31, 2003 and recorded November 6, 2003 in Volume 217, page 61 of the Town of Waterbury land records, and

- b. Mortgage Deed of the Grantor to Countrywide Bank, a Division of Treasury Bank, N.A. dated July 3, 2004 and recorded in Volume 225, page 498 of the Town of Waterbury land records, and to all rights of way and easements of record.

Grantee shall have the continuing right, exercisable at any and all times, and from time to time, within said Easement Area to cut down, trim, burn, spray with chemicals, and to remove and keep cleared by such means as the Grantee deems desirable, including chipping and spreading of chips within the Easement Area, such trees, underbrush, and vegetation, or parts thereof growing within or overhanging such Easement Area as in the judgment of the Grantee may interfere with or endanger the efficient operation and use of said facilities (the first clearing may be for less than the full width and may be widened from time to time to the full width), and to remove all structures which are now found, or which may be subsequently placed on or within, such Easement Area in violation of the rights and privileges of the Grantee hereunder; and also with the right, by planting, trimming and by any other means, to control the growth of vegetation within such Easement Area.

Together, also, with the permanent right at any and all times to enter on adjacent lands of the Grantor and to cut or trim and remove such trees growing outside the limits of the Easement Area (Danger trees) which may, in the opinion of the Grantee, interfere with or be likely to interfere with, the successful operation of the facilities now or hereafter to be constructed on said Easement Area.

This grant shall include the right to enter upon and cross other property owned by the Grantor for the purpose of gaining access to the Easement Area and of exercising any of the rights hereby conveyed; provided, however, that said rights must be exercised in a reasonable manner, and any damage to the property of the Grantor caused by the Grantee shall be borne by the Grantee.

The Grantors, their successors and assigns, shall not erect or place within the limits of or upon the Easement Area any building, line, conduit, dam, levee, lake, pond, or any other structure or thing, nor will any change in the grade or elevation of the Easement Area be made, which, in the judgment of the Grantee, might interfere with the exercise of the rights hereby conveyed.

Notwithstanding the above, Grantee hereby acknowledges and agrees that this deed gives Grantor a temporary license to maintain the structure(s) or portions of structures either specifically pre-approved by Grantee for construction, or presently located within said Easement Area as identified on the recorded plat referenced above, and further agrees that these existing structure(s) may remain, provided, however, that in the event the existing structure(s) or portions thereof are removed, dismantled, destroyed or otherwise no longer exist, Grantor, together with its successors and assigns, shall not, and shall have no right to, rebuild the portion(s) of the structure(s) which encroaches within the Easement Area. Furthermore, no modifications, additions or changes may be made to said structure(s) or portions thereof, without the prior written consent of Grantee. In the event the National Electrical Safety Code standards or other regulations governing the operation of Grantee's electrical facilities change, such that the existing encroachment(s) violates such standards or regulations, Grantee reserves the right to require the removal of the portion(s) of the structures which encroaches within the Easement Area.

Grantor reserves the right to cultivate or otherwise make use of said lands, including the right to cross and re-cross the Easement Area at such places as may be necessary or desirable in using the lands adjacent thereto, provided, that such use, crossing and re-crossing shall not interfere with the enjoyment or use of the rights, easement and estate hereby granted.

Subject to the condition below, no delay of Grantee in the use or enjoyment of any right or easement hereby granted or in constructing or installing any of the facilities in or along the right-of-way shall result in the loss, limitation, or abandonment of any of the right, title, interest, easement, or estate granted hereby.

This grant covers all the agreements and stipulations between Grantor and Grantee and no representations or statements, verbal or written have been made modifying, adding to or changing the terms or consideration for this grant.

The Grantee is further granted the right to assign to others, in whole or in part, any or all of the right-of-way, estate, interests, rights, privileges and easements herein granted.

TO HAVE AND TO HOLD the above granted rights and easements, with all privileges and appurtenances thereunto belonging, unto the said Grantee, its successors and assigns forever, to it and their own proper use, benefit and behoof.

The easement above will subject whatever interest the Grantor might have in and to the described parcel to its conditions.

IN WITNESS WHEREOF we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
David P. Hathaway L.S.

\_\_\_\_\_  
Carrie T. Hathaway L.S.

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_

BE IT REMEMBERED, that on the \_\_\_\_ day of \_\_\_\_\_, 2009, personally appeared David P. Hathaway and Carrie T. Hathaway, signers and sealers of the foregoing written instrument and acknowledged the same to be of their free act and deed.

Before me,  
  
Notary Public  
  
My Commission Expires: